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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/089,777      | 06/18/2002  | Robert Everett       | KEL 0124 PA         | 2615             |

7590 06/08/2005

Killworth Gottman Hagan & Schaeff  
One Dayton Centre Suite 500  
One South Main Street  
Dayton, OH 45402-2023

EXAMINER

NGUYEN, KIEN T

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b>     | <b>Applicant(s)</b> |
|------------------------------|----------------------------|---------------------|
|                              | 10/089,777                 | EVERETT ET AL.      |
|                              | Examiner<br>Kien T. Nguyen | Art Unit<br>3714    |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 February 2005.

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-103 is/are pending in the application.  
4a) Of the above claim(s) 50-76 is/are withdrawn from consideration.

5)  Claim(s) 77,78 and 80-92 is/are allowed.

6)  Claim(s) 1-7,22,23,45,46,48,49,93-97 and 100-103 is/are rejected.

7)  Claim(s) 8-21,24-44,47,98 and 99 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/02/02 and 02/19/02

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

***Claim Objections***

Claim 79 is objected to because of the following informalities: it depends on non-elected claim (70). Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 22, 23, 45, 46, 48, 49, 93-97, 101-103 are rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent application 2 290 239 (UK '239).

UK '239 disclosed a utility surface comprising an apparatus having at least one movable tray (2) having an upper surface (8) with the same characteristics as an activity surface and means (3) for guiding the tray into a gap so as to wedge (see Figs. 4 and 6) the tray releasably in the gap and thereby to provide a continuous activity surface as shown in Fig. 6. The apparatus is arranged to reopen the gap by disengaging the movable tray (1c) (Fig. 6) and the guiding means is arranged to guide the tray out of the gap away from the activity surface. The apparatus is arranged to close or reopen the gap. Fig. 1 shows the activity surface and the upper surface of the tray comprise turf surfaces. Fig. 6 shows a plurality of movable trays. Support platform (20) (Fig. 3) is provided for the movable tray. The support platform comprises a plurality of diagonal support members (23) (Fig. 4) arranged in groups, each group being arranged to focus the weight of a region of the tray to a single location. The edges of the activity surface

at the gap are provided up a reinforcing wall structure (5). Edging material (4) and soil filling (7) are provided in the activity surface, the edging material and soil filling being arranged to provide an activity surface edge which extends beyond the upper portion of the reinforcing wall structure. The edging material (4) includes porous lining (see abstract). The activity surface inherently includes a pathway. The surface is provided in a stadium (see abstract). The activity surface in a stadium inherently has regions which wear at different rates and the replaceable section is capable of providing in a region of excessive wear. The activity surface is capable for playing various sports activity which may be included racetrack or activity pitch.

Claims 93 and 100 are rejected under 35 U.S.C. 102(b) as being clearly by DiBenedetto U.S. Patent 5,746,028.

DiBenedetto disclosed a replaceable section (10) of an activity surface, the section is provided on a moveable and configurable tray (30) and being arranged to disengage the activity surface and be moved away therefrom to be replaced by another section of the activity surface, the tray is movable on rails (12).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over UK

It is noted that UK '239 failed to specifically disclose the depth of the soil filling and the coefficient of deformation as set forth in these claims. However, the depth of the soil filling and coefficient of deformation of the turf dictated by the type of sport that the activity is being used for. Accordingly, it would have been a matter of design choice to modify the soil filling and coefficient of deformation of the turf of UK '239 with any desirable specification to accommodate any specific activity.

***Allowable Subject Matter***

Claims 77, 78, 80-92 are allowed.

Claims 8-21, 24-44, 47, 98, 99 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (571) 272-4428. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kien T. Nguyen  
Primary Examiner  
Art Unit 3714

Ktn